IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1141 of 2005
With
CRIMINAL APPEAL No. 2651 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant(s)
Versus
RAMESHJI UJAJI @ UDAJI THAKORE - Opponent(s)

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Appearance :
MR KT DAVE, APP for Appellant(s) : 1,
MR NN PRAJAPATI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 27/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

1. The aforestated two appeals have been filed challenging validity of the judgement and order passed by the Additional Sessions Judge, 4th Fast Track Court, Banaskantha, Deesa District, dated 23rd March, 2005 in Sessions Case No. 4/2004.

2. Criminal Appeal No. 1141/2005 has been filed by the State of the Gujarat praying for enhancement of punishment imposed upon the convict whereas Criminal Appeal No. 2651/2005 has been filed by convict against the order of conviction. As both the appeals arise out of one common judgement, at the request of the learned advocates, both the appeals have been heard and decided by this common judgement. The convict has been referred to as the appellant hereinbelow.

3. By virtue of the impugned judgement, the appellant has been convicted for commission of offences under the provisions of Sections 376, 363 & 506(2) of the Indian Penal Code.

3.1 For commission of offence under Section 376 of

the Indian Penal Code, the appellant has been sentenced to undergo Rigorous Imprisonment for 7 years and a fine of Rs. 1000/- has been imposed, in default of payment of fine, he has to undergo Rigorous Imprisonment for 2 months.

3.2 For commission of offence under Section 363 of the Indian Penal Code, the appellant has been sentenced to undergo Rigorous Imprisonment for 3 years and a fine of Rs. 500/-, in default of payment of fine, one month Rigorous Imprisonment.

3.3 For commission of offence under Section 506(2) of the Indian Penal Code, the appellant has been ordered to undergo Rigorous Imprisonment for one year with a fine of Rs. 500/-, in default of payment of fine, one month Rigorous Imprisonment. All the substantive punishments have been ordered to run concurrently.

4. We have heard learned APP Shri K.T. Dave appearing for the State and learned advocate Ms. Chetna M. Joshi appearing for the appellant-convict.

5. In view of the observation made by the Hon'ble Supreme Court in the case of **State of Karnataka Vs. Puttaraja, AIR 2003 SCW 6429,** name of the victim has not been stated and she has been referred to as a 'victim'.

6. The case of the prosecution before the Sessions

Court, in a nutshell, was as under;

6.1 The convict, aged about 14 years filed First Information Report (Exh. 44) before the Police Station Officer, Deodar Police Station on 13th October, 2003 stating that before about 4 days from the date of filing the First Information Report, when she was sleeping with her younger sister at her residence, around 12:00 midnight, her neighbour, Thakore Rameshji Ujaji, woke her up and asked her to come out of her house as he wanted to talk to her. As the appellant was a distant relative of the victim, the victim went out of her house and at that time, the appellant had taken out his knife and gave her threat to the effect that she should not make any noise otherwise he would kill her. The appellant had held her hand tight and had forcefully dragged her. As the victim shouted, her sister Chandra also got up. She also shouted but as nobody was residing in the nearby vicinity, nobody came for help. Thereafter, the appellant took her to village Meetha. At that time, it was around 2:00 a.m. and a passenger jeep moving from Deodar to Bhabhar was passing through the road and, therefore, the appellant stopped the jeep by raising his hand. The appellant thereafter constrained the victim to sit in the jeep and asked the driver of the jeep to take them to Bhabhar and upon payment of Rs. 100/-, the driver of the jeep took the appellant and the victim near village Bhabhar. Upon payment of Rs. 100/-to the jeep driver, the driver went away and at that

time, around 3:00 a.m., the appellant had raped the victim. Thereafter, the appellant sat with the victim for about 30-45 minutes and then the appellant took the victim to the residence of Shankuben, who is cousin of the appellant. At the residence of Shankuben, the victim told Shankuben about what had transpired and, thereafter, Shankuben fired the appellant and, thereafter, the appellant went away. Shankuben thereafter came to Ludhra by jeep so as to inform about the said incident to her husband Ranchhodbhai. The victim had come to village Ludhra around 5:00 a.m. and, thereafter, with her parents, she went to Deodar Police Station and filed the First Information Report.

7. In the course of the trial, the Sessions Court considered the following important documents;

(1) First Information Report, (Exh. 44)
(2) Panchnama of the victim (Exh. 25)
(3) Panchnama of place of offence (Exh. 34)
(4) Panchnama of Muddamal recovered from the appellant (Exh. 28)
(5) Birth certificate of the victim, (Exh. 41)
(6) MLC Certificate, (Exh. 12)
(7) FSL report, (Exh. 51 & 52)

8. The following important witnesses had been examined by the Sessions Court;

(1) Dr. N.J. Parikh, P.W. No. 1,(Exh. 11)

(2) Dr. P.N. Solanki, P.W. No. 13(Exh.37)

(3) The victim, P.W. No. 2, (Exh. 18)

(4) Jamnaji Raichand Thakore, father of the victim, P.W. No. 3, (Exh. 19)

(5) Nanuben Thakore, mother of the victim, P.W. No. 4, (Exh. 20)

(6) Shankuben Ranchodbhai, P.W. No. 6, (Exh. 26)

(7) Jahangirkhan Husenkhan Malik, P.W. No. 7, (Exh. 27)

(8) Babubhai Chanabhai, Panch witness, P.W. No. 7, (Exh. 28)

(9) Chotaji Ramchandji Thakore, P.W. No. 9, (Exh. 32)

(10) Jayrambhai Ghasribhai, P.W. No. 10, (Exh. 33)

(11) Chandrakantha Jamnaji Thakore, sister of the victim, P.W. No. 11, (Exh. 35)

(12) Bhavaji Visaji Thakore, P.W. No. 12, (Exh. 36)

(13) Sartanbhai Jivabhai Makwana, Principal of the school, P.W. No. 14, (Exh. 40)

(14) Maheshkumar Babulal Naik, P.W. No. 17, (Exh.48)

9. After considering the aforesaid evidence and upon hearing the learned advocates, the Sessions Court came to the conclusion that the appellant-convict had committed the offences referred to hereinabove and, therefore, by the impugned judgement and order, he has been sentenced as stated hereinabove.

10. The learned advocate appearing for the appellant has mainly submitted that as there was no injury on

the private part of the victim, it cannot be said that the appellant had committed the offence. It has been further submitted that only on the basis of the deposition of the victim, the Sessions Court ought not to have convicted the appellant. She has further stated that there was consent on the part of the victim and as the victim was more than 16 years old at that time when the alleged offence had been committed, the Sessions Court has wrongly convicted the appellant. Lastly, she has submitted that the appellant has been wrongly involved in the offence because of some animosity between the family members of the victim and the appellant. She has therefore submitted that the appeal of the appellant-convict should be allowed and the impugned order should be quashed and set aside.

11. On the other hand, learned APP Shri K.T. Dave has taken us through the relevant evidence and has supported the judgement delivered by the Sessions Court.

12. We have heard the learned advocates and have carefully gone through the evidence, which had been adduced before the Sessions Court.

13. Upon perusal of the evidence, we do not find any substance in the submissions made by the learned advocate appearing for the appellant. In our opinion, the Sessions Court has rightly come to the

conclusion that the offences referred to hereinabove had been committed by the appellant-convict and, therefore, he has been rightly sentenced to undergo Rigorous Imprisonment for 7 years and a fine has been also imposed upon him.

14. So far as the first submission of the learned advocate appearing for the appellant is concerned, in our opinion, the said submission cannot be accepted. Simply because there was no injury on the private part of the victim, it cannot be said that the victim had not been raped.

15. There is medical evidence to the effect that rape had been committed. If one looks at the report of the Forensic Science Laboratory, it is clear that sperm of the appellant had been found from the petticoat of the victim. Blood group of the victim is “O” whereas blood group of the appellant is “B”. Presence of spermatozoa of “B” group on the petticoat of the victim corroborates evidence to the effect that she had been raped. Even from the trousers of the appellant, blood of “O” group had been found. The aforestated medical evidence supported by evidence of the victim strengthens the case of the prosecution and absence of injury would not lead to acquittal of the appellant as submitted by the learned advocate appearing for the appellant.

16. Submissions of the learned advocate appearing for the appellant to the effect that only on the

basis of evidence of the victim, the Sessions Court could not have found the appellant guilty is also not correct because there is sufficient medical evidence, which has been referred to hereinabove, to show that evidence of the victim has been corroborated by medical evidence. It is therefore not true that the appellant has been held guilty only on the basis of evidence adduced by the victim.

17. The submissions made by the learned advocate for the appellant to the effect that there was consent of the victim, P.W. No. 2, (Exh. 18) and age of the victim was more than 16 years are also not correct. Upon perusal of Exh. 41, certificate given by Principal, Dharampur Primary School, it is clear that date of birth of the victim is 1st June, 1990. The First Information Report had been filed on 13th October, 2003. The birth date certificate has been duly proved by Sartanbhai Jivabhai Makwana, P.W. No. 14, (Exh. 40). Thus, there is no doubt with regard to the date of birth of the victim, which is 1st June, 1990. In addition to the aforesaid concrete evidence, even the ossification test reveals that the victim was approximately 15 years old, as deposed by Dr. N.J. Parikh, P.W. No. 1, (Exh. 11). Thus, there is medical evidence to the effect that age of the victim was approximately 15 years whereas there is birth certificate to the effect that date of birth of the victim is 1st June, 1990. The aforesaid evidence clearly shows that the victim was less than 16 years old and, therefore, even assuming that the victim had

given consent, the submission with regard to the consent of the victim, would not help the appellant. Therefore, we do not accept the submission made by the learned advocate that age of the victim was more than 16 years.

18. The last submission, which has been made by the learned advocate, is to the effect that the appellant has been wrongly involved in the said offence because of some animosity, which he had with the family members of the victim. We do not agree with the said submission for the reason that there is sufficient ocular evidence to the effect that the offence had been committed. Sister of the victim, Chandrakantha Jamnaji Thakore, P.W. No. 11, (Exh. 35), who was physically handicapped has adduced evidence to the effect that the appellant came to her residence and had called the victim and thereafter she had heard shouts of the victim. She was also informed by the victim that she had been raped by the appellant. Looking to the said evidence, and more particularly, presence of spermatozoa of the appellant on the petticoat of the victim and blood of the victim on the trousers of the appellant, it cannot be said that the appellant has been wrongfully involved in the offence because of some animosity between the family members of the victim and the appellant.

19. For the aforestated reasons and for the reasons stated by the learned Judge in the judgement, in our opinion, there is no reason to interfere with the

judgement and we also do not find any error committed by the Sessions Court and, therefore, the appeal filed by the appellant i.e. Criminal Appeal No. 2651/2005 is dismissed.

20. Looking to the fact that the appellant is hardly 25 years old and the Sessions Court has imposed minimum punishment upon the appellant, we do not see any reason to enhance the punishment and, therefore, the appeal filed by the State, namely, Criminal Appeal No. 1141/2005 is also dismissed.

(ANIL R. DAVE, J.)

(K.S. JHAVERI, J.)

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